

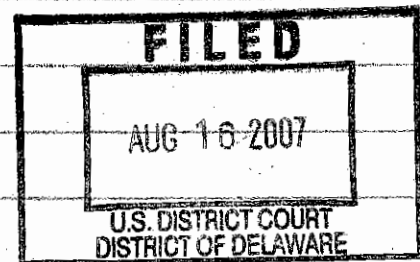
UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE

KEVIN C. BRATHWAITE  
Plaintiff

V.

C.A. No 007-006, G.MS  
Jury Trial Demanded

Correctional Medical  
Services, Scott Altman  
and Cathy Kionke  
Defendants



Plaintiff's Response to the  
Defendant's Answer

Now comes the Plaintiff, Kevin C. Brathwaite, responding to the defendant's answer. As a response this Plaintiff offers the following:

1. This Plaintiff does state a claim in the statement of claim attached to the complaint.

2. This Plaintiff has a Constitutional right to receive proper dental treatment.
3. These defendants are attempting to minimize the dental treatment that this Plaintiff needs.
4. 18 Del. C. § 6853 does not apply, because this Plaintiff does not claim negligence anywhere in his complaint. In fact the only relief requested is for treatment, constitutional violations, pain and suffering and punitive damages. There is no relief being sought for negligence.
5. These claims are not barred by statute of limitations, as the problems still haven't been corrected.
6. Civil rights claims should not be barred because these defendants continue to blatantly disregard the constitutional

rights of this Plaintiff.

7. This Plaintiff should receive Punitive damages due to the fact that he continuously made numerous attempts to receive the proper dental treatment that he is entitled to, but these defendants continuously violated his rights, and they also violate the rights of many other inmates by denying them the proper care and treatment that they are entitled to. And these defendants must be shown that they cannot continue to violate the constitutional rights of these individuals. And punitive damages are meant to be preventative measures.

8. This Plaintiff has been continuously attempting to get treatment for a root canal, replaced fillings and fillings.

9. This Plaintiff is currently in possession of a piece of



one of his fillings that he showed to the dentist that needs to be replaced but was left untreated.

10. This PLAINTIFF has already exhausted all of his administrative remedies all the way through to the appeal process. After the outside grievance committee reviewed and investigated this PLAINTIFFS appeal they granted his appeal and upheld the grievance request. See attached exhibits.

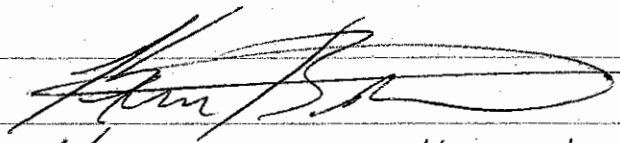
11. After the outside grievance committee granted this PLAINTIFFS appeal, he wrote ~~defendants~~, Scott Altman, Cathy Kionke AND Gail Eller to request treatment once again. See, Attached exhibits.

12. Regardless of how the injuries occurred, these defendants have a legal and constitutional obligation to properly treat this PLAINTIFF for any and all

## Medical and dental needs.

13. Prison healthcare administrators nationwide were well advised to study the new C-D-C-R- PLAN to formulate plans for their own jurisdictions. See, Perez V. Tilton U.S.D.C. Nd, CA. No. 305 CV. 5241.

Wherefore, this Plaintiff respectfully request that this honorable Court rule in his favor

  
KEVIN C. Brathwaite  
1181 Paddock Rd.  
SMYRNA DE.  
19977

Dated: August, 14<sup>th</sup>, 2007

DEPARTMENT OF CORRECTION  
Bureau of Prisons  
245 McKee Road  
Dover, Delaware 19904

March 12, 2007  
March 12, 2007

17-BL-8

Inmate BRATHWAITE KEVIN C  
SBI # 00315294  
DCC Delaware Correctional Center  
SMYRNA DE, 19977

Dear KEVIN BRATHWAITE:

We have reviewed your Grievance Case # 46948 dated 06/08/2006.

Based upon the documentation presented for our review, we uphold your appeal request.

Accordingly, there is no further issue to mediate nor Outside Review necessary as provided by BOP Procedure 4.4 entitled "Inmate Grievance Procedure", Level III appeals.

Sincerely,

Richard Kearney  
Bureau Chief

EXhibit-A

DCC Delaware Correctional Center  
 Smyrna Landing Road  
 SMYRNA DE, 19977  
 Phone No. 302-653-9261

Date: 03/13/2007

**GRIEVANCE REPORT****OFFENDER GRIEVANCE INFORMATION**

<b>Offender Name :</b> BRATHWAITE, KEVIN C	<b>SBI# :</b> 00315294	<b>Institution :</b> DCC
<b>Grievance # :</b> 46948	<b>Grievance Date :</b> 06/08/2006	<b>Category :</b> Individual
<b>Status :</b> Resolved	<b>Resolution Status :</b> Level 3	<b>Resol. Date :</b> 03/13/2007
<b>Grievance Type:</b> Health Issue (Medical)	<b>Incident Date :</b> 06/08/2006	<b>Incident Time :</b>
<b>IGC :</b> Merson, Lise M	<b>Housing Location :</b> Bldg 17, Lower, Tier B, Cell 8, Single	

**OFFENDER GRIEVANCE DETAILS**

**Description of Complaint:** Inmate claims: My front teeth have developed an infection and the dentist told me that I need a root canal which can only be approved by the DOC.

**Remedy Requested :** That I be given a root canal to properly treat the infection in my teeth.

**INDIVIDUALS INVOLVED**

Type	SBI #	Name

**ADDITIONAL GRIEVANCE INFORMATION**

<b>Medical Grievance :</b> YES	<b>Date Received by Medical Unit :</b> 06/20/2006
<b>Investigation Sent :</b> 06/20/2006	<b>Investigation Sent To :</b> Rodweller, Deborah
<b>Grievance Amount :</b>	



DCC Delaware Correctional Center

Date: 03/13/2007

Smyrna Landing Road

SMYRNA DE, 19977

Phone No. 302-653-9261

**INFORMAL RESOLUTION****OFFENDER GRIEVANCE INFORMATION**

<b>Offender Name :</b> BRATHWAITE, KEVIN C	<b>SBI# :</b> 00315294	<b>Institution :</b> DCC
<b>Grievance # :</b> 46948	<b>Grievance Date :</b> 06/08/2006	<b>Category :</b> Individual
<b>Status :</b> Resolved	<b>Resolution Status:</b> Level 3	<b>Inmate Status :</b>
<b>Grievance Type:</b> Health Issue (Medical)	<b>Incident Date :</b> 06/08/2006	<b>Incident Time :</b>
<b>IGC :</b> Merson, Lise M	<b>Housing Location :</b> Bldg 17, Lower, Tier B, Cell 8, Single	

**INFORMAL RESOLUTION****Investigator Name :** Rodweller, Deborah**Date of Report :** 06/20/2006

**Investigation Report :** o documentation in chart re: need for root canal.  
placed on op list for fillings on 6-08-06.  
Approx 4 mth waiting list according to dentist Zimble.  
Next level.

**Reason for Referring:****Investigator Name :** Eller, Gail**Date of Report :** 11/15/2006

**Investigation Report :** Inmate instructed to put in a sick call request for dental and be specific as to questionable infection in front teeth.

**Reason for Referring:****Offender's Signature:** \_\_\_\_\_**Date :** \_\_\_\_\_**Witness (Officer) :** \_\_\_\_\_



DCC Delaware Correctional Center  
Smyrna Landing Road  
SMYRNA DE, 19977  
Phone No. 302-653-9261

Date: 03/13/2007

**GRIEVANCE INFORMATION - IGC****OFFENDER GRIEVANCE INFORMATION**

<b>Offender Name :</b> BRATHWAITE, KEVIN C	<b>SBI# :</b> 00315294	<b>Institution :</b> DCC
<b>Grievance # :</b> 46948	<b>Grievance Date :</b> 06/08/2006	<b>Category :</b> Individual
<b>Status :</b> Resolved	<b>Resolution Status :</b> Level 3	<b>Inmate Status :</b>
<b>Grievance Type:</b> Health Issue (Medical)	<b>Incident Date :</b> 06/08/2006	<b>Incident Time :</b>
<b>IGC :</b> Merson, Lise M	<b>Housing Location :</b> Bldg 17, Lower, Tier B, Cell 8, Single	

**IGC**

**Medical Provider:** \_\_\_\_\_ **Date Assigned** \_\_\_\_\_

**Comments:**

☒ Forward to MGC      ☐ Forward to Medical Provider      ☐ Warden Notified  
☐ Forward to RGC      **Date Forwarded to MGC :** 09/27/2006  
☐ Offender Signature Captured      **Date Offender Signed :** \_\_\_\_\_

DCC Delaware Correctional Center  
Smyrna Landing Road  
SMYRNA DE, 19977  
Phone No. 302-653-9261

Date: 03/13/2007

**GRIEVANCE INFORMATION - Appeal****OFFENDER GRIEVANCE INFORMATION**

<b>Offender Name :</b> BRATHWAITE, KEVIN C	<b>SBI# :</b> 00315294	<b>Institution :</b> DCC
<b>Grievance # :</b> 46948	<b>Grievance Date :</b> 06/08/2006	<b>Category :</b> Individual
<b>Status :</b> Resolved	<b>Resolution Status :</b> Level 3	<b>Inmate Status :</b>
<b>Grievance Type:</b> Health Issue (Medical)	<b>Incident Date :</b> 06/08/2006	<b>Incident Time :</b>
<b>IGC :</b> Merson, Lise M	<b>Housing Location :</b> Bldg 17, Lower, Tier B, Cell 8, Single	

**APPEAL REQUEST**

Appeal received 14 November 2006.

Inmate states: The damage that was done to my front teeth is of no fault of mine. An infection has developed that requires a root canal. This problem has been ongoing since Oct., 9th 2004. the dentist told me that the only way I can get a root canal is if it gets approved by the DOC. The infection on my front teeth seems to be getting worse. So at this time I am requesting that my front teeth be repaired and that I get a root canal as soon as possible.

**REMEDY REQUEST**

DCC Delaware Correctional Center  
Smyrna Landing Road  
SMYRNA DE, 19977  
Phone No. 302-653-9261

Date: 03/13/2007

**GRIEVANCE INFORMATION - BGO****OFFENDER GRIEVANCE INFORMATION**

Offender Name : BRATHWAITE, KEVIN C	SBI# : 00315294	Institution : DCC
Grievance # : 46948	Grievance Date : 06/08/2006	Category : Individual
Status : Resolved	Resolution Status : Level 3	Inmate Status :
Grievance Type: Health Issue (Medical)	Incident Date : 06/08/2006	Incident Time :
IGC : Merson, Lise M	Housing Location : Bldg 17, Lower, Tier B, Cell 8, Single	

**REFERRED TO**

Due Date : 12/05/2006 Referred to: Person Name: Welch, James

**Type of Information Requested :**

Grievant requests root canal & treatment for infection.

**Response to Information Requested :****DECISION**

Date Received : 11/17/2006

Decision Date : 02/06/2007

Vote : Uphold

**Comments :**

Grievant needs dental care (fillings and root canal).



DCC Delaware Correctional Center  
Smyrna Landing Road  
SMYRNA DE, 19977  
Phone No. 302-653-9261

Date: 03/13/2007

**GRIEVANCE INFORMATION - Bureau Chief****OFFENDER GRIEVANCE INFORMATION**

Offender Name : BRATHWAITE, KEVIN C      SBI# : 00315294      Institution : DCC  
Grievance # : 46948      Grievance Date : 06/08/2006      Category : Individual  
Status : Resolved      Resolution Status : Level 3      Inmate Status :  
Grievance Type: Health Issue (Medical)      Incident Date : 06/08/2006      Incident Time :  
IGC : Merson, Lise M      Housing Location : Bldg 17, Lower, Tier B, Cell 8, Single

**DECISION**

Decision Date: 03/12/2007      Vote : Uphold

Comments :

**GRIEVANCE INFORMATION - MGC****OFFENDER GRIEVANCE INFORMATION**

Offender Name : BRATHWAITE, KEVIN C      SBI# : 00315294      Institution : DCC  
Grievance # : 46948      Grievance Date : 06/08/2006      Category : Individual  
Status : Resolved      Resolution Status: Level 3      Inmate Status :  
Grievance Type: Health Issue (Medical)      Incident Date : 06/08/2006      Incident Time :  
IGC : Merson, Lise M      Housing Location : Bldg 17, Lower, Tier B, Cell 8, Single

**MGC**

Date Received : 09/27/2006

Date of Recommendation: 11/16/2006

**GRIEVANCE COMMITTEE MEMBERS**

Person Type	SBI #	Name	Vote
Staff		Eller, Gail	Deny
Staff		Branch, Adriene	Deny
Staff		Gordon, Oshenka	Deny
Staff		McCreanor, Michael	Abstain

**VOTE COUNT**

Uphold : 0

Deny : 3

Abstain : 1

**TIE BREAKER**

Person Type	SBI #	Name	Vote
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**RECOMMENDATION**

Hearing held Monday 13 November 2006.

Deny: Submit a sick call request for the dentist about ? infection in front teeth.



DEPARTMENT OF CORRECTION  
Bureau of Prisons  
245 McKee Road  
Dover, Delaware 19904

March 12, 2007

Inmate BRATHWAITE KEVIN C  
SBI # 00315294  
DCC Delaware Correctional Center  
SMYRNA DE, 19977

Dear KEVIN BRATHWAITE:

We have reviewed your Grievance Case # 46949 dated 06/08/2006.

Based upon the documentation presented for our review, we uphold your appeal request.

Accordingly, there is no further issue to mediate nor Outside Review necessary as provided by BOP Procedure 4.4 entitled "Inmate Grievance Procedure", Level III appeals.

Sincerely,

Richard Kearney  
Bureau Chief

17, BL-8

Exhibit - B

DCC Delaware Correctional Center  
Smyrna Landing Road  
SMYRNA DE, 19977  
Phone No. 302-653-9261

Date: 03/13/2007

**GRIEVANCE REPORT****OFFENDER GRIEVANCE INFORMATION**

<b>Offender Name :</b> BRATHWAITE, KEVIN C	<b>SBI# :</b> 00315294	<b>Institution :</b> DCC
<b>Grievance # :</b> 46949	<b>Grievance Date :</b> 06/08/2006	<b>Category :</b> Individual
<b>Status :</b> Resolved	<b>Resolution Status :</b> Level 3	<b>Resol. Date :</b> 03/13/2007
<b>Grievance Type:</b> Health Issue (Medical)	<b>Incident Date :</b> 06/08/2006	<b>Incident Time :</b>
<b>IGC :</b> Merson, Lise M	<b>Housing Location :</b> Bldg 17, Lower, Tier B, Cell 8, Single	

**OFFENDER GRIEVANCE DETAILS**

**Description of Complaint:** Inmate claims: I was told today that I would have to wait many months to have three teeth filled. If I have to wait that long, then by the time I am called for fillings the teeth will be even more decayed.

**Remedy Requested :** That I get dental treatment ASAP.

**INDIVIDUALS INVOLVED**

Type	SBI #	Name
------	-------	------

**ADDITIONAL GRIEVANCE INFORMATION**

<b>Medical Grievance :</b> YES	<b>Date Received by Medical Unit :</b> 06/20/2006
<b>Investigation Sent :</b> 06/20/2006	<b>Investigation Sent To :</b> Rodweller, Deborah
<b>Grievance Amount :</b>	

DCC Delaware Correctional Center  
Smyrna Landing Road  
SMYRNA DE, 19977  
Phone No. 302-653-9261

Date: 03/13/2007

**INFORMAL RESOLUTION****OFFENDER GRIEVANCE INFORMATION**

<b>Offender Name :</b> BRATHWAITE, KEVIN C	<b>SBI# :</b> 00315294	<b>Institution :</b> DCC
<b>Grievance # :</b> 46949	<b>Grievance Date :</b> 06/08/2006	<b>Category :</b> Individual
<b>Status :</b> Resolved	<b>Resolution Status:</b> Level 3	<b>Inmate Status :</b>
<b>Grievance Type:</b> Health Issue (Medical)	<b>Incident Date :</b> 06/08/2006	<b>Incident Time :</b>
<b>IGC :</b> Merson, Lise M	<b>Housing Location :</b> Bldg 17, Lower, Tier B, Cell 8, Single	

**INFORMAL RESOLUTION**

**Investigator Name :** Rodweller, Deborah **Date of Report :** 06/20/2006

**Investigation Report :** Only 1 sick call in chart dated 05-22-06.  
placed on 4 mth waiting list for fillings according to Dr Zimble.

**Reason for Referring:**

**Investigator Name :** Eller, Gail **Date of Report :** 11/15/2006

**Investigation Report :** Inmate is on the dental list and will be notified when the time arrives to be seen.

**Reason for Referring:**

**Offender's Signature:** \_\_\_\_\_

**Date :** \_\_\_\_\_

**Witness (Officer) :** \_\_\_\_\_

DCC Delaware Correctional Center  
Smyrna Landing Road  
SMYRNA DE, 19977  
Phone No. 302-653-9261

Date: 03/13/2007

**GRIEVANCE INFORMATION - IGC****OFFENDER GRIEVANCE INFORMATION**

Offender Name : BRATHWAITE, KEVIN C	SBI# : 00315294	Institution : DCC
Grievance # : 46949	Grievance Date : 06/08/2006	Category : Individual
Status : Resolved	Resolution Status : Level 3	Inmate Status :
Grievance Type: Health Issue (Medical)	Incident Date : 06/08/2006	Incident Time :
IGC : Merson, Lise M	Housing Location : Bldg 17, Lower, Tier B, Cell 8, Single	

**IGC**

Medical Provider:

Date Assigned

Comments:

<input checked="" type="checkbox"/> Forward to MGC	<input type="checkbox"/> Forward to Medical Provider	<input type="checkbox"/> Warden Notified
<input type="checkbox"/> Forward to RGC	Date Forwarded to MGC :	09/27/2006
<input type="checkbox"/> Offender Signature Captured	Date Offender Signed :	



DCC Delaware Correctional Center  
Smyrna Landing Road  
SMYRNA DE, 19977  
Phone No. 302-653-9261

Date: 03/13/2007

**GRIEVANCE INFORMATION - Appeal****OFFENDER GRIEVANCE INFORMATION**

<b>Offender Name :</b> BRATHWAITE, KEVIN C	<b>SBI# :</b> 00315294	<b>Institution :</b> DCC
<b>Grievance # :</b> 46949	<b>Grievance Date :</b> 06/08/2006	<b>Category :</b> Individual
<b>Status :</b> Resolved	<b>Resolution Status :</b> Level 3	<b>Inmate Status :</b>
<b>Grievance Type:</b> Health Issue (Medical)	<b>Incident Date :</b> 06/08/2006	<b>Incident Time :</b>
<b>IGC :</b> Merson, Lise M	<b>Housing Location :</b> Bldg 17, Lower, Tier B, Cell 8, Single	

**APPEAL REQUEST**

Appeal received 14 November 2006.

Inmate states: Over the past two (2) years I have submitted numerous sick call request to have my fillings replaced and nothing has been done. On Sept, 25th I was called to the dentist office and she didn't even examine my teeth or do x-rays or anything. all she did was ask me to sign off on a grievance. When I refused to sign off, she told me I would not be seen for Nine (9) to twelve (12) months. The damage to my teeth is only getting worse and it's already been over two (2) years.

**REMEDY REQUEST**

DCC Delaware Correctional Center  
Smyrna Landing Road  
SMYRNA DE, 19977  
Phone No. 302-653-9261

Date: 03/13/2007

**GRIEVANCE INFORMATION - BGO****OFFENDER GRIEVANCE INFORMATION**

<b>Offender Name :</b> BRATHWAITE, KEVIN C	<b>SBI# :</b> 00315294	<b>Institution :</b> DCC
<b>Grievance # :</b> 46949	<b>Grievance Date :</b> 06/08/2006	<b>Category :</b> Individual
<b>Status :</b> Resolved	<b>Resolution Status :</b> Level 3	<b>Inmate Status :</b>
<b>Grievance Type:</b> Health Issue (Medical)	<b>Incident Date :</b> 06/08/2006	<b>Incident Time :</b>
<b>IGC :</b> Merson, Lise M	<b>Housing Location :</b> Bldg 17, Lower, Tier B, Cell 8, Single	

**REFERRED TO**

**Due Date :** 12/05/2006      **Referred to:** Person      **Name:** Welch, James

**Type of Information Requested :**

Grievant reports elongated delay in receiving dental services.

**Response to Information Requested :****DECISION**

**Date Received :** 11/16/2006

**Decision Date :** 02/06/2007

**Vote :** Uphold

**Comments :**

Grievant needs fillings. His sick call is dated 5/22/06



## GRIEVANCE INFORMATION - Bureau Chief

### OFFENDER GRIEVANCE INFORMATION

Offender Name : BRATHWAITE, KEVIN C SBI# : 00315294 Institution : DCC  
Grievance # : 46949 Grievance Date : 06/08/2006 Category : Individual  
Status : Resolved Resolution Status : Level 3 Inmate Status :  
Grievance Type: Health Issue (Medical) Incident Date : 06/08/2006 Incident Time :  
IGC : Merson, Lise M Housing Location : Bldg 17, Lower, Tier B, Cell 8, Single

### DECISION

Decision Date: 03/12/2007 Vote : Uphold  
Comments :

## GRIEVANCE INFORMATION - MGC

### OFFENDER GRIEVANCE INFORMATION

Offender Name : BRATHWAITE, KEVIN C SBI# : 00315294 Institution : DCC  
Grievance # : 46949 Grievance Date : 06/08/2006 Category : Individual  
Status : Resolved Resolution Status: Level 3 Inmate Status :  
Grievance Type: Health Issue (Medical) Incident Date : 06/08/2006 Incident Time :  
IGC : Merson, Lise M Housing Location : Bldg 17, Lower, Tier B, Cell 8, Single

### MGC

Date Received : 09/27/2006 Date of Recommendation: 11/16/2006

### GRIEVANCE COMMITTEE MEMBERS

Person Type	SBI #	Name	Vote
Staff		Eller, Gail	Deny
Staff		Gordon, Oshenka	Deny
Staff		Branch, Adriene	Deny
Staff		McCreanor, Michael	Abstain

### VOTE COUNT

Uphold : 0 Deny : 3 Abstain : 1

### TIE BREAKER

Person Type	SBI #	Name	Vote
-------------	-------	------	------

### RECOMMENDATION

Hearing held Monday 13 November 2006.  
Deny: Inmate on dental list - They will schedule inmate as his time arrives.



TO: SCOTT A. ALTMAN

FROM: KEVIN C. BRATHWAITE # 315294

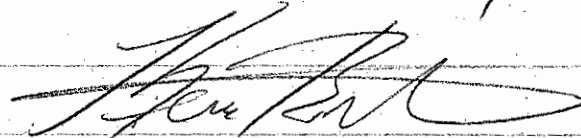
RE: GRIEVANCE APPEALS  
# 46948 AND 46949

DATE: MARCH, 20<sup>th</sup>, 2007

DEAR MR. ALTMAN,

I AM WRITING  
you this letter to let you know  
that the two grievances that I  
filed in regards to dental treatment  
were both reversed on appeal AND  
my request was ~~to~~ upheld. So at  
this time I am once again  
requesting immediate dental treatment  
and that all of my dental needs  
be corrected.

Sincerely



C.C. DR. CATHY KIONKE

GAIL ELLER

D/0

EXHIBIT - C



TO: DR. Cathy Kionke

FROM: Kevin C. Brathwaite # 315294

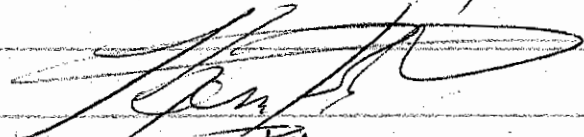
RE: Grievance Appeals  
# 46948 AND 46949

DATE: March, 20<sup>th</sup>, 2007

Dear DR. Kionke,

I AM Writing  
you this letter to let you know  
that the two grievances that I  
Filed in regards to dental treatment  
were both reversed on appeal  
AND my request was upheld. So  
At this time I AM ONCE AGAIN  
requesting immediate dental treatment  
AND that all of my dental needs  
be corrected.

Sincerely



C.C. Scott A. Altman

Cell 511-1

~~EXH~~  
EXH 64-D

TO: Gail Eller

FROM: Kevin C. Brathwaite #315294

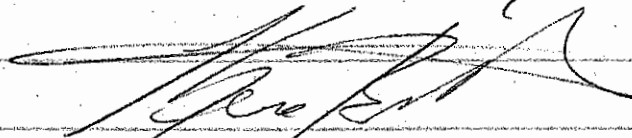
RE: GRIEVANCE APPEALS  
#46948 AND 46949

DATE: March, 20<sup>th</sup>, 2007

DEAR MS. ELLER,

I AM writing you this letter to let you know that the two grievances that I filed in regards to dental treatment were both reversed on appeal and my request was upheld. So at this time I am once again requesting immediate dental treatment AND that all of my dental needs be corrected.

Sincerely



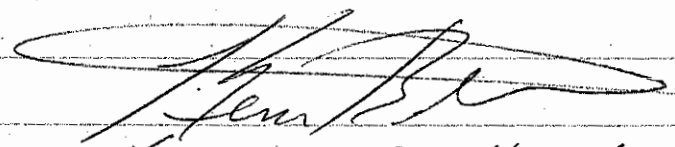
C.C. SCOTT A. ALTMAN  
DR. KIONKE  
L/P

EXhibit-E

Certificate of Service

I Kevin C. Brathwaite, states that I have caused A copy of the Attached response to the defendants answer, to be Mailed to the Following party by way of U.S. Postal Service.

JAMES E. DRNEC, ESQ.  
711 King St.  
Wilmington DE.  
19801

  
KEVIN C. BRATHWAITE  
1181 Paddock Rd.  
SMYRNA DE.  
19977

Dated: August, 14<sup>th</sup>, 2007